REMARKS

The following issues are outstanding in the present application:

- The declaration is defective;
- Claim 22 is objected to;
- Claim 11 is rejected under 35 U.S.C. 112, second paragraph;
- Claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 are rejected under 35 U.S.C. 102(b);
- Claims 1, 16, 18, 23 and 24 are rejected under 35 U.S.C. 102(b);
- Claims 1, 9, 10 and 12 are rejected under 35 U.S.C. 102(b);
- Claims 3-5 are rejected under 35 U.S.C. 103(a);
- Claims 6 and 22 are rejected under 35 U.S.C. 103(a); and
- Claims 7 and 8 are rejected under 35 U.S.C. 103(a).

Claim Amendments

Independent claims 1 and 20 have been amended in order to more clearly define the subject matter of the present invention. These claims now recite (a) preparing food materials and ingredients to form a food product; (b) preparing a gelling agent to form a gelling solution (c) enrobing the food product with the gelling solution or adding the gelling solution to the food product; and (d) cooling the food product and gelling solution, wherein a gelled food product is formed. Claim 22 has been amended to remove the rejection based on informalities, and claim 11 has been amended to overcome the Section 112, second paragraph rejection. Claim 23 has been amended to add the step of thawing the gelled food product wherein the gel structure is maintained. No new matter has been added.

Defective Declaration

The Examiner found the declaration to be defective because it does not state whether the inventors are sole or joint inventors of the claimed invention. This is an incorrect rejection because in the current MPEP, Section 602, 35 CFR 1.63 no longer requires the oath or declaration to state that the inventor is a sole or joint inventor of the invention claimed. Thus, Applicant respectfully requests that this rejection be withdrawn.

Claim Objections

Claim 22 is objected to because the word "a" appears to be out of place in front of the word "ratio." The word "a" has been deleated.

35 U.S.C. 112

Claim 11 has been rejected under 35 U.S.C. 112, second paragraph because the term "less than" renderes the range of gelling agent claimed indefinite. Claim 11 has been amended in order to remove this rejection. Application believes that the recited range is now definite.

35 U.S.C. 102(b)

Claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 have been rejected under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent No. 4,196,219 to Shaw. Applicant respectfully traverses this rejection.

Shaw is directed to a method of extending the storage life of frozen precooked foods by dipping the precooked foods in a coating composition of the calcium salt of carrageenan, freezing the precooked food and storing the food in the frozen state. In Shaw the food product is submerged in a dispersion of the calcium salt of carrageenan and the excess dispersion is drained off the food product.

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or is inherently described in a single prior art reference. *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicant respectfully submits that nowhere does the Shaw reference teach or disclose a method of preparing gelled food products in which the food product is enrobed with the gelling solution or adding the

gelling solution to the food product. The Shaw references teaches dipping the food product, but not enrobing the food product or adding the gelling solution to the food product. Therefore, Applicant respectfully asserts that since Shaw fails to teach or suggest each and every limitation of the presently amended independent claims 1 and 20, a rejection under 35 U.S.C. 102(b) cannot be sustained. Since dependent claims 2, 11, 13, 14, 15, 17, and 19 depend at least in part on amended independent claim 1, they by definition are not anticipated by the Shaw reference.

Amended claim 23 now includes the step of thawing the gelled food product wherein the gel structure is maintained. There is nothing in the Shaw reference that teaches of discloses a step of thawing the gelled food product wherein the gel structure is maintained. Shaw only teaches that the frozen coated meat is tempered at about 4° C overnight prior to reheating. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent No. 4,196,219 to Shaw.

35 U.S.C. 102(b)

Claims 1, 16, 18, 23 and 24 have been rejected under 25 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent No. 5,858,426 to Bienvenu. Applicant respectfully traverses this rejection.

Bienvenu discloses a meltable food product for applying seasonings to food or to serve as a sauce for food. The food product in the Bienvenu reference is a solidified gelling solution that is formed from water, a base food flavoring agent and a solidifying agent. The food product or film of Bienvenu is placed upon a prepared food item, the food item is heated and the film melts, providing seasonings and/or sauce for the food item.

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or is inherently described in a single prior art reference. *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicant respectfully submits that nowhere does the Bienvenu reference teach or disclose a method of preparing gelled food products that includes the steps of enrobing the food product with the gelling solution or adding the gelling solution to the food product and then cooling the food product and gelling solution, wherein a gelled food product is formed as recited in independent claim

1. This is because in the Bienvenu reference the gelling solution is the solidified meltable food product or wrap and no other food product is formed. Therefore, Applicant respectfully asserts that since Bienvenu fails to teach or suggest each and every limitation of the presently amended independent claim 1, a rejection under 35 U.S.C. 102(b) cannot be sustained. Since dependent claims 16 and 18 depend at least in part on amended independent claim 1, they by definition are not anticipated by the Bienvenu reference.

Amended claim 23 now includes the step of thawing the gelled food product wherein the gel structure is maintained. There is nothing in the Bienvenu reference that teaches of discloses a step of thawing the gelled food product wherein the gel structure is maintained. Bienvenu only teaches that the gelling solution is solidified by chilling. Since dependent claim 24 depends on amended claim 23, it by definition is not anticipated by the Bienvenu reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1, 16, 18, 23 and 24 under 25 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent No. 5,858,426 to Bienvenu.

35 U.S.C. 102(b)

Claims 1, 9, 10 and 12 have been rejected under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent 3,395,024 to Earle as evidenced by Leblang, online article publication. Applicant respectfully traverses this rejection.

Earle is directed to a method of preserving foods by first immersing the prepared food product in an aqueous alginate dispersion containing a carbohydrate comprising at least one sugar and allowing the excess dispersion to drain therefrom, dipping the food product again with an aqueous gelling solution containing calcium ions which is required to gel the alginate coating and allowing the excess dispersion to drain therefrom. After the coatings gel, the food product is ready for display, storage, breading, freezing, irradiation, cooking, etc.

A claim is anticipated only if each and every element as set forth in the claim is found either expressly or is inherently described in a single prior art reference. *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicant respectfully submits that nowhere does the Earle reference teach or disclose a method for preparing gelled food products that includes the steps of enrobing the food product with the gelling solution or adding the gelling solution to the food product and then cooling the food product and gelling

solution, wherein a gelled food product is formed as recited in independent claim 1. The Earle reference teaches that after the food product is dipped in each of the alginate dispersion and the gelling solution, the excess solutions are drained from the food product (Col 4, lines 1-14) and no further processing is required. The Earle references teaches dipping the food product, but not enrobing the food product or adding the gelling solution to the food product. Therefore, Applicant respectfully asserts that since Earle fails to teach or suggest each and every limitation of the presently amended independent claim 1, a rejection under 35 U.S.C. 102(b) cannot be sustained. Since dependent claims 9, 10 and 12 depend at least in part on amended independent claim 1, they by definition are not anticipated by the Earle reference. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 1, 9, 10 and 12 under 35 U.S.C. 102(b) as having subject matter anticipated by U.S. Patent 3,395,024 to Earle as evidenced by Leblang, online article publication.

35 U.S.C. 103(a)

Claims 3-5 have been rejected under 35 U.S.C. 103(a) as having subject matter unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of U.S. Patent No. 5,308,636 to Tye. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Shaw obviates the present rejection. The Tye reference is directed to increasing the viscosity of gellable starch-based systems by admixing a glucomannan such as konjac to the starch. Thus, the Tye reference adds no new teaching to the Shaw reference that would result in the inventive method of claim 1. Claims 3-5 depend from claim 1. If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 1, claims 3-5 are nonobvioius over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 4-5 under 35 U.S.C. 103(a) as being unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of U.S. Patent No. 5,308,636 to Tye.

35 U.S.C. 103(a)

Claims 6 and 22 have been rejected under 35 U.S.C. 103(a) as having subject matter unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of Bienvenu and U.S. Patent No. 5,077,066 to Mattson. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Shaw and Bienvenu obviates the present rejection. The Mattson reference is directed to methods of preparing frozen comestibles for immediate consumption. Mattson teaches combining frozen food constituents with a substantially dry sauce concentrate; adding a liquid such as water to the combination and heating the combination with a source of microwave power. Mattson add no new teachings to the Shaw and Bienveun references that would result in the inventive method of claims 1 and 21. Claims 6 and 22 depend from claims 1 and 21 respectively. If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 1 and 21, claims 6 and 22 are nonobvioius over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 6 and 22 under 35 U.S.C. 103(a) as being unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of n view of Bienvenu and U.S. Patent No. 5,077,066 to Mattson.

35 U.S.C. 103(a)

Claims 7 and 8 have been rejected under 35 U.S.C. 103(a) as having subject matter unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of U.S. Patent No. 5,314,705 to Hansson. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the previous discussion of the patentability of the current invention over Shaw obviates the present rejection. The Hansson reference is directed to a process for preparing a frozen meal containing meat pieces and vegetables. The process includes the steps of mixing meat pieces with a sauce gelled with thickener, forming the meat pieces and sauce into a block, freezing the block and packing the frozen block with

vegetables for later consumption. Thus, Hansson adds no new teachings to the Shaw reference that would result in the inventive method of claim 1. Claims 7 and 8 depend from claim 1. If an independent claim is non-obvious under 35 U.S.C. 103, than any claim depending therefrom is by definition nonobvious. *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts that because of their dependency from claim 1, claims 7 and 8 are nonobvious over these references. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection of claims 7 and 8 under 35 U.S.C. 103(a) as being unpatentable over Shaw as applied to claims 1, 2, 11, 13, 14, 15, 17, 19, 20, 21, and 23 above and further in view of n view of U.S. Patent No. 5,314,705 to Hansson.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

A check for a one month extension of time is being submitted with this response. Applicant believes no other fee is due with this response. However, if other fees are due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02734US0 from which the undersigned is authorized to draw.

Dated: 11-17-04

Respectfully submitted,

By _____

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